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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,267	03/31/2004	Jos Bastiaens	08CN8851-6	7478

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EXAMINER

ZEMEL, IRINA SOPJIA

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 04/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/815,267

Applicant(s)

BASTIAENS ET AL.

Examiner

Irina S. Zemel

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102/103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 4, 7, 8, 9, 10, 12, 15-16, 30, 32, 34, 35, 37, 39, 42, 43, 44, 52 and 53 are rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over US 4,927,859 to Weber et al., (hereinafter "Weber").

The rejection stands as per reasons of record. Even though the expandable beads or pellets are disclosed in the reference as obtained by a different step, the degree of impregnation with the blowing agent disclosed in the reference and the illustrative examples of the instant application are very similar, thus making the expandable beads of a substantially similar composition. In view of those similarities, it is still believed that the claimed product obtained by a process that includes one different step are still not patentable distinguishable over the product disclosed in the reference.

The burden was shifted to the applicants to provide **factual** evidence to the contrary, however no such evidence have been presented at this time.

Claim Rejections - 35 USC § 103

Art Unit: 1711

Claims 3, 5, 11, 13, 31, 33, 38, 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber in combination with Schmidt.

The rejection stands as per reason of record and discussions set forth above.

Claims 14, 17, 19, 21-23,25, 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber in combination with Allen.

The rejection stands as per reason of record and discussions set forth above.

Claims 18, 20, 24, 26, are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber in combination with Allen and further in combination with Schmidt.

The rejection stands as per reason of record and discussions set forth above.

Claims 1, 2, 4, 7, 8, 9, 10, 12, 15-16, 30, 32, 34, 35, 37, 39, 42, 43, 44, 52 and 53 are rejected under 35 U.S.C. 103(a) as obvious over Weber in combination with US Patent 5,000,891 to Green, (hereinafter "Green").

Claims 3, 5, 11, 13, 31, 33, 38, 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber in combination with Schmidt and further in combination with Green.

Claims 14, 17, 19, 21-23,25, 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber in combination with Allen and further in combination with Green.

Claims 18, 20, 24, 26, are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber in combination with Allen and further in combination with Schmidt and further in combination with Green.

The disclosures of Weber, Allen, Schmidt are discussed in the previous office actions and above. As previously discussed, the primary reference, Weber, discloses expandable beads produced via a different process. Also, as discussed above, it is believed that the claimed final products are not patentable distinguishable over the products disclosed in the prior art. However, even if, *arguendo*, there is a difference in the claimed and disclosed products, the difference would have been obvious for an ordinary artisan. It is notoriously known that polystyrene based expandable beads can be manufactured via dozens of different processes, from most common impregnation of bead with blowing agent, polymerizing styrene in the presence of the blowing agent, extrusion melt mixing polystyrene with the blowing agents to some exotic methods of forming such beads via exotic techniques involving costly machinery. See, for example, backgrounds of the Green reference (and the entire document as well). Each method is known for its advantages and choice of one of them that correspond to the claimed step would have been obvious for its known advantages, absent showing of unexpected results that can be clearly attributed to the claimed process steps.

Response to Arguments

Applicant's arguments filed 1-9-2006 have been fully considered but they are not persuasive. With respect to the Weber reference, the applicants argue that the expandable particles disclosed in the reference are prepared by a different method, and thus, those expandable particles and articles produces from them may be different and may have some different properties. The applicants further state that by producing the expandable beads by the process disclosed in the reference, it would be difficult to predict the effect on the sound properties as the blowing agent (and other components) possible migration. In applicants own words possible migration of the composition components "could potentially effect the sound properties of the expanded compositions." That clearly implies that, on the other hand, it may NOT have any effect and the expanded articles, in fact, may be completely the same as those disclosed in the reference. The examiner met her burden in presenting the reason why it is believed that the claimed products are, in fact, inherently, the same as the disclosed products. There is NO factual evidence to the contrary. All the applicants presented are mere arguments that the compositions disclosed in the reference MAY, potentially differ from the claimed product. It has been long established by the court that once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir. 1983). Mere allegations that the product disclosed in the

Art Unit: 1711

reference may be different is not a sufficient ground to establish and unobvious difference.

The arguments regarding the Allen reference are noted, but are moot since the rejection over Allen is withdrawn. However, the examiner wishes to comment that having or not having an outer skin on any polystyrene based foamed product obtained via different foaming methods is NOTORIOUSLY known in the art and changing extrusion/foam molding conditions to obtain either product would have been clearly obvious depending on the desired end product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irina S. Zemel whose telephone number is (571)272-0577. The examiner can normally be reached on Monday-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571)272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

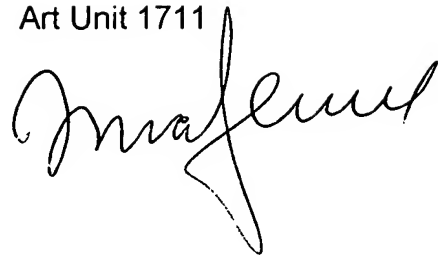
Irina S. Zemel

Application/Control Number: 10/815,267
Art Unit: 1711

Page 7

ISZ

Art Unit 1711

A handwritten signature in black ink, appearing to read "M. J. Lee" or similar, written in a cursive style.